

the property qualifies for a charitable deduction under section 2055 in the decedent's estate.

[T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(b)-10 Effective dates.

Except as specifically provided in §§ 20.2056(b)-5(c)(3) (ii) and (iii), 20.2056(b)-7(d)(3), 20.2056(b)-7(e)(5), and 20.2056(b)-8(b), the provisions of §§ 20.2056(b)-5(c), 20.2056(b)-7, 20.2056(b)-8, and 20.2056(b)-9 are applicable with respect to estates of decedents dying after March 1, 1994. With respect to decedents dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. In addition, the rule in the last sentence of § 20.2056(b)-5(f)(1) and the rule in the last sentence of § 20.2056(b)-7(d)(1) regarding the effect on the spouse's right to income if applicable local law provides for the reasonable apportionment between the income and remainder beneficiaries of the total return of the trust are applicable with respect to trusts for taxable years ending after January 2, 2004.

[T.D. 8779, 63 FR 44393, Aug. 19, 1998, as amended by T.D. 9102, 69 FR 21, Jan. 2, 2004]

§ 20.2056(c)-1 Marital deduction; definition of "passed from the decedent."

(a) *In general.* The following rules are applicable in determining the person to whom any property interest "passed from the decedent":

(1) Property interests devolving upon any person (or persons) as surviving co-owner with the decedent under any form of joint ownership under which the right of survivorship existed are considered as having passed from the decedent to such person (or persons).

(2) Property interests at any time subject to the decedent's power to appoint (whether alone or in conjunction with any person) are considered as having passed from the decedent to the appointee under his exercise of the power, or, in case of the lapse, release or non-exercise of the power, as having passed from the decedent to the taker in default of exercise.

(3) The dower or curtesy interest (or statutory interest in lieu thereof) of

the decedent's surviving spouse is considered as having passed from the decedent to his spouse.

(4) The proceeds of insurance upon the life of the decedent are considered as having passed from the decedent to the person who, at the time of the decedent's death, was entitled to receive the proceeds.

(5) Any property interest transferred during life, bequeathed or devised by the decedent, or inherited from the decedent, is considered as having passed to the person to whom he transferred, bequeathed, or devised the interest, or to the person who inherited the interest from him.

(6) The survivor's interest in an annuity or other payment described in section 2039 (see §§ 20.2039-1 and 20.2039-2) is considered as having passed from the decedent to the survivor only to the extent that the value of such interest is included in the decedent's gross estate under that section. If only a portion of the entire annuity or other payment is included in the decedent's gross estate and the annuity or other payment is payable to more than one beneficiary, then the value of the interest considered to have passed to each beneficiary is that portion of the amount payable to each beneficiary that the amount of the annuity or other payment included in the decedent's gross estate bears to the total value of the annuity or other payment payable to all beneficiaries.

(b) *Expectant interest in property under community property laws.* If before the decedent's death the decedent's surviving spouse had merely an expectant interest in property held by her and the decedent under community property laws, that interest is considered as having passed from the decedent to the spouse.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(c)-2 Marital deduction; definition of "passed from the decedent to his surviving spouse."

(a) *In general.* In general, the definition stated in § 20.2056(c)-1 is applicable in determining the property interests which "passed from the decedent to his

surviving spouse". Special rules are provided, however, for the following:

(1) In the case of certain interests with income for life to the surviving spouse with power of appointment in her (see § 20.2056(b)-5);

(2) In the case of certain interests with income for life to the surviving spouse that the executor elects to treat as qualified terminable interest property (see § 20.2056(b)-7);

(3) In the case of proceeds held by the insurer under a life insurance, endowment, or annuity contract with power of appointment in the surviving spouse (see § 20.2056(b)-6);

(4) In case of the disclaimer of an interest by the surviving spouse or by any other person (see § 20.2056(d)-1);

(5) In case of an election by the surviving spouse (see paragraph (c) of this section); and

(6) In case of a controversy involving the decedent's will, see paragraph (d) of this section.

A property interest is treated as passing to the surviving spouse only if it passes to the spouse as beneficial owner, except to the extent otherwise provided in §§ 20.2056(b)-5 through 20.2056(b)-7. For this purpose, where a property interest passed from the decedent in trust, such interest is considered to have passed from him to his surviving spouse to the extent of her beneficial interest therein. The deduction may not be taken with respect to a property interest which passed to such spouse merely as trustee, or subject to a binding agreement by the spouse to dispose of the interest in favor of a third person. An allowance or award paid to a surviving spouse pursuant to local law for her support during the administration of the decedent's estate constitutes a property interest passing from the decedent to his surviving spouse. In determining whether or not such an interest is deductible, however, see generally the terminable interest rules of § 20.2056(b)-1 and especially example (8) of paragraph (g) of that section.

(b) *Examples.* The following illustrate the provisions of paragraph (a) of this section:

(1) A property interest bequeathed in trust by H (the decedent) is considered

as having passed from him to W (his surviving spouse)—

(i) If the trust income is payable to W for life and upon her death the corpus is distributable to her executors or administrators;

(ii) If W is entitled to the trust income for a term of years following which the corpus is to be paid to W or her estate;

(iii) If the trust income is to be accumulated for a term of years or for W's life and the augmented fund paid to W or her estate; or

(iv) If the terms of the transfer satisfy the requirements of § 20.2056(b)-5 or § 20.2056(b)-7.

(2) If H devised property—

(i) To A for life with remainder absolutely to W or her estate, the remainder interest is considered to have passed from H to W;

(ii) To W for life with remainder to her estate, the entire property is considered as having passed from H to W; or

(iii) Under conditions which satisfy the provisions of § 20.2056(b)-5 or 20.2056(b)-7, the entire property is considered as having passed from H to W.

(3) Proceeds of insurance upon the life of H are considered as having passed from H to W if the terms of the contract—

(i) Meet the requirements of § 20.2056(b)-6;

(ii) Provide that the proceeds are payable to W in a lump sum;

(iii) Provide that the proceeds are payable in installments to W for life and after her death any remaining installments are payable to her estate;

(iv) Provide that interest on the proceeds is payable to W for life and upon her death the principal amount is payable to her estate; or

(v) Provide that the proceeds are payable to a trustee under an arrangement whereby the requirements of § 20.2056(b)-5 or 20.2056(b)-7 are satisfied.

(c) *Effect of election by surviving spouse.* This paragraph contains rules applicable if the surviving spouse may elect between a property interest offered to her under the decedent's will

or other instrument and a property interest to which she is otherwise entitled (such as dower, a right in the decedent's estate, or her interest under community property laws) of which adverse disposition was attempted by the decedent under the will or other instrument. If the surviving spouse elects to take against the will or other instrument, then the property interests offered thereunder are not considered as having "passed from the decedent to his surviving spouse" and the dower or other property interest retained by her is considered as having so passed (if it otherwise so qualifies under this section). If the surviving spouse elects to take under the will or other instrument, then the dower or other property interest relinquished by her is not considered as having "passed from the decedent to his surviving spouse" (irrespective of whether it otherwise comes within the definition stated in paragraph (a) of this section) and the interest taken under the will or other instrument is considered as having so passed (if it otherwise so qualifies). As to the valuation of the property interest taken under the will or other instrument, see paragraph (b) of § 20.2056(b)-4.

(d) *Will contests.* (1) If as a result of a controversy involving the decedent's will, or involving any bequest or devise thereunder, his surviving spouse assigns or surrenders a property interest in settlement of the controversy, the interest so assigned or surrendered is not considered as having "passed from the decedent to his surviving spouse."

(2) If as a result of the controversy involving the decedent's will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having "passed from the decedent to his surviving spouse" only if the assignment or surrender as a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. Such a bona fide recognition will be presumed where the assignment or surrender was pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest. However, such a decree will be accepted only to the

extent that the court passed upon the facts upon which deductibility of the property interest depends. If the assignment or surrender was pursuant to a decree rendered by consent, or pursuant to an agreement not to contest the will or not to probate the will, it will not necessarily be accepted as a bona fide evaluation of the rights of the spouse.

(e) *Survivorship.* If the order of deaths of the decedent and his spouse cannot be established by proof, a presumption (whether supplied by local law, the decedent's will, or otherwise) that the decedent was survived by his spouse will be recognized as satisfying paragraph (b)(1) of § 20.2056(a)-1, but only to the extent that it has the effect of giving to the spouse an interest in property includible in her gross estate under Part III of Subchapter A of Chapter 11. Under these circumstances, if an estate tax return is required to be filed for the estate of the decedent's spouse, the marital deduction will not be allowed in the final audit of the estate tax return of the decedent's estate with respect to any property interest which has not been finally determined to be includible in the gross estate of his spouse.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(c)-3 Marital deduction; definition of "passed from the decedent to a person other than his surviving spouse".

The expression "passed from the decedent to a person other than his surviving spouse" refers to any property interest which, under the definition stated in § 20.2056(c)-1 is considered as having "passed from the decedent" and which under the rules referred to in § 20.2056(c)-2 is not considered as having "passed from the decedent to his surviving spouse." Interests which passed to a person other than the surviving spouse include interests so passing under the decedent's exercise, release, or nonexercise of a nontaxable power to appoint. It is immaterial whether the property interest which passed from the decedent to a person other than his surviving spouse is included in the decedent's gross estate. The term